EXXON CORP.

IBLA 86-1656 Decided February 18, 1987

Appeal from a letter of the Eastern States Office, Bureau of Land Management, denying a request for repayment of amounts tendered in bonus payments and rentals for certain competitive oil and gas leases. ES 26618, etc.

Appeal dismissed.

1. Administrative Procedure: Standing -- Appeals -- Claims Against the United States: Generally -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Standing to Appeal

   The jurisdiction of the Board of Land Appeals extends to appeals from decisions of Departmental officials regarding the disposition of minerals on public domain and acquired lands pursuant to statutory authority and the regulations promulgated thereunder. As a general rule, this Board has no authority to entertain a claim under the common law of contracts for damages for contract breach and an appeal to this Board predicated on such a ground is properly dismissed for lack of jurisdiction.

APPEARANCES: Melinda Furche Harmon, Esq., Houston, Texas, and E. Edward Bruce, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Exxon Corporation has brought this appeal from an August 7, 1986, letter of G. Curtis Jones, Jr., State Director, Eastern States Office, Bureau of Land Management (BLM), denying appellant's demand for refund in the amount of $9,443,084 representing bonus bids and rental payments which had been paid by appellant to obtain certain competitive oil and gas leases. The leases are located within Fort Chaffee, a military installation in Arkansas administered by the Department of the Army. The basis for the refund request was the failure of the Army to allow surface operations on the leaseholds or portions thereof lying within the impact area of the artillery range at Fort Chaffee. Appellant alleges this to be a violation or breach of the lease terms, stipulations in the bid notice, and the stipulations signed by the lessee.

As a threshold matter, appellant alleges the Board lacks jurisdiction over this claim for damages and/or recision and refund of sums paid under

the lease contracts. Exxon asserts it filed a protective appeal from the denial of its refund request to avoid being barred from further relief by reason of failure to exhaust administrative remedies. However, appellant contends, the authority to grant relief because of misrepresentation, mistake, and breach of contract is beyond the jurisdiction of the Board of Land Appeals. Exxon has filed a motion for expedited review, asserting it is entitled to a prompt administrative decision on the jurisdictional issue to allow it to either recover or pursue judicial relief in the United States Claims Court. The motion for expedited consideration was granted by order of this Board, dated December 9, 1986. 1/

[1] The jurisdiction of this Board is limited to that authority delegated by the Secretary of the Interior which is defined in the Departmental regulations at 43 CFR Part 4. Thus, the Board is authorized to issue final decisions for the Department in appeals from decisions of BLM officials relating to the use and disposition of the public lands and the disposition of Federal mineral resources on both public domain and acquired lands. 43 CFR 4.1(b)(3). Although the regulatory definition is not directly dispositive, a review of prior Board decisions involving claims for refunds of sums tendered by lessees in conjunction with issued oil and gas leases provides some useful insight.

On appeal by an offeror from issuance of a noncompetitive oil and gas lease subject to stipulations imposed by the Department which the offeror had not had the opportunity to review or assent to, the Board held the lease to be without effect, in the absence of notice of the contested stipulation. Emery Energy, Inc., 64 IBLA 285 (1982). Consent to these stipulations as a prerequisite to lease issuance was required by regulation. Id. at 287 n.3. Thus, in the absence of notice and assent to the contested stipulation, an offeror was entitled to a refund of the advance rental which was tendered in connection with the lease offer. Id. at 288. This principle has been extended to competitive oil and gas lease offers. Texaco U.S.A., 82 IBLA 61 (1984); accord, Shell Oil Co., 83 IBLA 21 (1984). However, these cases are clearly distinguishable from the present appeal. Exxon is not protesting issuance of the leases subject to a stipulation to which it did not agree. Rather, appellant is asserting interference with the right of surface occupancy under the lease terms and stipulations as a ground for damages.

The Board has also noted that refund of advance rental payments tendered in connection with a noncompetitive oil and gas lease may be ordered if, after administrative review, it is determined that the lease had been issued to a party other than the first-qualified applicant, cancellation of the lease is required, lessee has been deprived of the benefit of the lease, and there has been no intent to defraud the Department and the public. Emery Energy, Inc., 90 IBLA 70 (1985). The refund, under the terms of 43 U.S.C. § 1734(c) (1982), 2/ was predicated on cancellation of a lease which had been

1/ The Board has been advised that, subsequent to the granting of this motion, suit has been filed in the claims courts.

2/ The statute at 43 U.S.C. § 1734(c) (1982) provides as follows:

"In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is

improperly issued in violation of a statutory obligation to a party other than the first-qualified applicant. Again, this is distinguishable from a claim for damages for breach of contract.

The jurisdiction of the Board to review BLM decisions regarding disposition of minerals on Federal public domain or acquired lands under 43 CFR 4.1 is limited to appeals from decisions implementing the relevant statutory and regulatory provisions regarding mineral leasing. There has been no delegation of authority to this Board which would permit us to adjudicate disputes arising under the law of contracts resulting in a claim for damages for breach of a lease contract. In this regard we note the BLM letter appealed from did not contend the BLM official had authority to award damages to Exxon. 3/ Review of those Board precedents addressing refund of rentals paid in connection with oil and gas leases pursuant to 43 U.S.C. § 1734(c) (1982) discloses that refunds have been limited to situations where a lease had been improperly issued, in violation of the terms of statute and/or implementing regulations and, hence, was either a nullity or subject to cancellation. This is distinguishable from appellant's claim for damages and/or recision for breach of contract, mutual mistake, or fraud. Thus, we must conclude the Board lacks jurisdiction over Exxon's claim and this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed for lack of jurisdiction.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

---

fn. 2 (continued)
in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds."

3/ Indeed the letter noted BLM, Department of the Army, and the Department of Justice are still seeking an "administrative resolution." A subsequent letter dated Nov. 12, 1986, from the Department of the Army to Exxon indicates access to the impact area at Fort Chaffee could be made available if Exxon is willing to decontaminate the lands, and requests certain information from appellant with a view to this result.